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MATTHEW B. MAJOR,
Plaintiff,
v.
WARDEN MCVEGE, et al.,
Defendants.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 24-cv-02629 BLF
**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a state inmate, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against several parole officers in San Jose and several individuals at Valley State Prison (“VSP”), where Plaintiff was previously incarcerated. Dkt. No. 1. This matter was reassigned to the undersigned. Dkt. No. 6. Plaintiff’s motion for leave to proceed *in forma pauperis* will be addressed in a separate order.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a

1 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any
2 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
3 upon which relief may be granted or seek monetary relief from a defendant who is immune
4 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
5 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
7 elements: (1) that a right secured by the Constitution or laws of the United States was
8 violated, and (2) that the alleged violation was committed by a person acting under the
9 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

10 **II. Plaintiff's Claims**

11 Plaintiff states that he was paroled to San Jose on April 4, 2022. Dkt. No. 1 at 3.
12 However, at the time he filed this complaint, Plaintiff was at the San Mateo Jail. *Id.* at 1.
13 Plaintiff claims that VSP has failed to release the remaining balance (\$1,700) that was in
14 his inmate trust account when he got paroled. *Id.* at 3. He claims that parole agents have
15 ignored his grievances and forms filed in this matter. *Id.* He wants the Court to have VSP
16 give him his money, and for Valley Medical to produce his medical records. *Id.* at 3.

17 The complaint fails to state any cognizable claim for relief against the named
18 Defendants. First of all, any claim against VSP and its employees must be filed in the
19 Eastern District, which has jurisdiction over claims arising out of Madera County where
20 VSP is located. 28 U.S.C. § 84(b). Furthermore, Plaintiff fails to allege facts showing that
21 San Jose parole agents violated his constitutional rights. There are no allegations
22 indicating that they are responsible for the failure of VSP to return Plaintiff's money or
23 that they have any authority to act on this issue. Lastly, Plaintiff fails to provide any basis
24 for the relief he seeks against Valley Medical for his medical records. Valley Medical is
25 not a state actor, as far as the Court is aware, and Plaintiff fails to allege how this hospital
26 has violated his constitutional rights to state a claim under § 1983.

1 Plaintiff shall be granted leave to file an amended complaint to state a cognizable
2 claim under § 1983. Liability may be imposed on an individual defendant under § 1983
3 only if Plaintiff can show that the defendant proximately caused the deprivation of a
4 federally protected right. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v.*
5 *City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
6 constitutional right within the meaning of section 1983 if he does an affirmative act,
7 participates in another's affirmative act or omits to perform an act which he is legally
8 required to do, that causes the deprivation of which the plaintiff complains. *See Leer*, 844
9 F.2d at 633.

10

11 CONCLUSION

12 For the reasons state above, the Court orders as follows:

13 1. The complaint is **DISMISSED with leave to amend**. Within **twenty-eight**
14 **(28) days** from the date this order is filed, Plaintiff shall file an amended complaint using
15 the court's form complaint to correct the deficiencies described above. The amended
16 complaint must include the caption and civil case number used in this order, *i.e.*, Case No.
17 C 24-cv-02629 BLF (PR), and the words "AMENDED COMPLAINT" on the first page.
18 Plaintiff must answer all the questions on the form in order for the action to proceed.
19 Plaintiff is reminded that the amended complaint supersedes the original, and Plaintiff may
20 not make references to the original complaint. Claims not included in the amended
21 complaint are no longer claims and defendants not named in an amended complaint are no
22 longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

23 2. **Failure to respond in accordance with this order by filing an amended**
24 **complaint in the time provided will result in the dismissal of this action with**
25 **prejudice for failure to state a claim for relief without further notice to Plaintiff.**

26 3. The Clerk shall include two copies of the court's complaint with a copy of

1 this order to Plaintiff.

2 **IT IS SO ORDERED.**

3 Dated: October 1, 2024



4 BETH LABSON FREEMAN
United States District Judge

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Northern District of California

25 Order of Dism. w/LTA
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